

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MICHAEL ANTHONY DAILEY,

Plaintiff,

vs.

No. CIV 08-538 MCA/LFG

ROBERT ULIBARRI, GILBERT GARCIA,
ELMER BUSTOS, JAMES THOMAS,
LEROY W. THOMPSON, and JONI BROWN,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME
AND DIRECTING SUBMISSION OF
SUPPLEMENTAL MARTINEZ REPORT**

THIS MATTER is before the Court on Plaintiff's Motion for an Additional 30 Days to Respond to Defendant's Court Ordered Martinez Report [Doc. 32]. No response is necessary. For the reasons given below, the Court grants the motion for extension of time and directs supplementation of the Martinez report.

This is a *pro se* civil rights action brought under 42 U.S.C. § 1983. In his Complaint, Plaintiff alleges various violations of his civil rights while incarcerated in New Mexico. After several claims, and one Defendant, were dismissed from the action, the Court ordered the remaining Defendants to submit a report pursuant to Martinez v. Aaron, 570 F.2d 317, 320 (10th Cir. 1978), to assist the Court in resolving this case. [Doc. 17].

Defendants submitted their Martinez Report [Doc. 20] on April 25, 2009. On June 22, 2009, Plaintiff requested a first extension of time to file his response to the Report; that request was granted. [See Docs. 22, 23]. He now states that he was re-incarcerated on a probation violation and, because of this change in circumstances, he requires more time to respond to the Report.

The Court reviewed the materials submitted by Defendants in their Martinez Report, as well as the material submitted by Plaintiff with his Complaint, and determines that additional

documentation is needed relevant to the issue of claim preclusion. Plaintiff will be given additional time to respond to the supplemental Report and may combine his response to the initial Report at that time.

The Court directs that Defendants supplement their Martinez Report, in the following particulars:

1. State the chronology of all dates on which Plaintiff was incarcerated between April 1, 2003 and the present, giving the location of incarceration, the security level at which he was incarcerated, the reasons for any changes in his location or incarceration level, any dates during which he was released on parole, and any re-incarcerations after periods of release and the reasons therefor.

2. As attachments to his Complaint, Plaintiff provided two documents [Doc. 1, Exs. 4 and 5] in the case of Dailey v. Ulibarri, No. CV 2005-702, Third Judicial District Court, Doña Ana County, New Mexico: “Findings of Fact and Conclusions of Law and Order to Show Cause,” filed May 8, 2006; and “Order to Transfer Petitioner to an Appropriate Out-of-State Penal Institution,” filed May 31, 2006.

Please provide the complete state court record of this action.

3. As an attachment to his Complaint, Plaintiff provided one page of a document [Doc. 1, Ex. 2], apparently part of a Respondent’s brief filed in an action in New Mexico state courts in which the petitioner, presumably Plaintiff herein, filed a “Motion to Revamp the Contract.” This document may or may not have been filed in the same litigation referred to in Point 1, above.

Please identify the litigation in which this brief was filed, and provide the complete state court record for it.

4. State whether Dailey filed any petitions for habeas corpus in the New Mexico state courts. If so, give the docket numbers, dates of filing, claims raised, dates of resolution, and the substance of any court rulings arising from any such habeas actions.

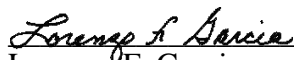
Defendants’ supplemental Martinez report must address each point set out above.

Documents in support of the report may be submitted simultaneously with the report, but the submission of documents alone, or documents submitted with an index but without an accompanying report, will not be in compliance with this order. Defendants may submit affidavits in support of the report, if necessary.

The parties are hereby given notice that the supplemental Martinez report may be used in deciding whether to grant summary judgment on Plaintiff's claims, and the parties should submit whatever materials they consider relevant to the claims and defenses. *See Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991).

IT IS THEREFORE ORDERED that Plaintiff's Motion for Extension of Time [Doc. 32] is granted.

IT IS FURTHER ORDERED that Defendants shall file and serve their supplemental Martinez Report, as detailed above, on or before **September 7, 2009**. Plaintiff will have thirty (30) days from the date of service of the supplemental Martinez Report to respond to both the initial and supplemental Reports.



Lorenzo F. Garcia
Chief United States Magistrate Judge